

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

EDGAR L. COMMODORE, JR.

PETITIONER

V.

NO. 3:15-CV-156-DMB-JMV

STATE OF MISSISSIPPI

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Jane M. Virden recommending that this habeas action be transferred to the Fifth Circuit.

**I
Procedural History**

On or about September 17, 2015, Edward L. Commodore, Jr., a state prisoner, filed a pro se prisoner petition under 28 U.S.C. § 2254, seeking a writ of habeas corpus. Doc. #1. More than two years later, Commodore, after obtaining counsel, filed an amended petition. Doc. #14.

On January 10, 2018, the State of Mississippi filed a motion to dismiss Commodore's amended petition. Doc. #15. Commodore responded in opposition to the motion on February 8, 2018, and the State replied on February 21, 2018. Doc. #17; Doc. #18.

On March 6, 2018, United States Magistrate Judge Jane M. Virden issued a Report and Recommendation recommending that Commodore's petition be treated as a successive petition and, accordingly, be transferred to the Fifth Circuit Court of Appeals to allow Commodore to seek leave to proceed with a successive petition. Doc. #19. Neither party filed objections to the Report and Recommendation.

**II
Analysis**

Where objections to a report and recommendation have been filed, a court must conduct a

“de novo review of those portions of the ... report and recommendation to which the [parties] specifically raised objections. With respect to those portions of the report and recommendation to which no objections were raised, the Court need only satisfy itself that there is no plain error on the face of the record.” *Gauthier v. Union Pac. R.R. Co.*, 644 F.Supp.2d 824, 828 (E.D. Tex. 2009) (citing *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996)) (internal citations omitted).

The Court has reviewed the Report and Recommendation and found no plain error. Therefore, the Report and Recommendation [19] is **ADOPTED** as the order of the Court. The Clerk of the Court is **DIRECTED** to transfer this petition and the entire record to the Fifth Circuit Court of Appeals. Accordingly, the State’s motion to dismiss [15] is **DENIED without prejudice**.

SO ORDERED, this 10th day of September, 2018.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE